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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/568,080	02/13/2006	Renato Caponi	099520018	7439
22852	7590	02/10/2009		
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413			EXAMINER DIACOU, ARI M	
			ART UNIT 3663	PAPER NUMBER
			MAIL DATE 02/10/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action
Before the Filing of an Appeal Brief

Application No.

10/568,080

Applicant(s)

CAPONI ET AL.

Examiner

ARI M. DIACOU

Art Unit

3663

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 January 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 22 January 2009. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): The 112P2 rejection of claim 31.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 29-36 and 38-56.
Claim(s) withdrawn from consideration: 44-48.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/A. M. D./
Examiner, Art Unit 3663

/Eric Bolda/
Primary Examiner, Art Unit 3663

Continuation of 11, does NOT place the application in condition for allowance because: Applicant made 3 arguments:

- A) On page 10, last paragraph, that "the examiner's application of the cited art does not disclose or suggest the correct order of the sequentially connected "first amplifying stage" and "second amplifying stage," as required in independent claim 29"
- B) On page 11, first full paragraph, that "Examiner's rejection is based on a first amplifying stage having a tellurite-based fiber rather than a "second amplifying stage comprising a tellurite-based active fiber doped with a rare earth element," as recited in Applicants' independent claim 29" and
- C) On the top of page 12, "As shown in FIG. 18 (reproduced below), the Raman amplifier stage 18-4 in Masuda et al. is the first amplifying stage that precedes each of the subsequently connected amplifying stages 18-2 and 18-3. In contrast, Applicants' claimed "third amplifying stage" is the last amplifying stage."

Argument A is unconvincing because the claims do not require that the "first amplifying stage" be disposed to the left of or before the "second amplifying stage".

Argument B is unconvincing because nothing in the claim requires that the first and second amplifiers cannot both be tellurite fibers. Having a tellurite or silica network former does not in principle exclude whether a fiber with that network formed can be doped with a rare-earth dopant.

Argument C is unconvincing, because again, similar to the response to argument A, "first", "second" and "third" do not per se get a rigid interpretation of "leftmost", "middle" and "rightmost". Further limitations claiming the order of the stages is needed for applicants narrower interpretation to be required by the claims.